

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes

September 17, 2002

The Capital Projects and Bond Oversight Committee met on Tuesday, September 17, 2002, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Jodie Haydon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jodie Haydon, Chairman; Senator Robert Leeper, Vice Chairman; Senators Tom Buford and Bob Jackson; and Representatives Robert Damron, Paul Marcotte, and Jim Wayne.

Guests testifying before the committee: Robin Kinney, Jack Morris, and Armond Russ, Finance and Administration Cabinet; Ken Clevidence and Dr. Ben Carr, University of Kentucky; Robbin Taylor, Gene Tice, and Deborah Wilkins, Western Kentucky University; Bill Hintze, Governor's Office for Policy and Management; Sandy Williams, Kentucky Infrastructure Authority; and Terri Fugate and Nora Marshall, Office of Financial Management.

LRC Staff: Mary Lynn Collins, Pat Ingram, Nancy Osborne, Kevin Mason, and Shawn Bowen.

Senator Jackson made a motion to approve the minutes of the August 20 meeting as submitted. The motion was seconded by Representative Wayne and passed by voice vote.

Chairman Haydon called on Ms. Mary Lynn Collins, Committee Staff Administrator, to review correspondence included in members' folders. Ms. Collins said after the August committee meeting, correspondence was sent from Chairman Haydon to the Attorney General requesting an opinion on the University of Kentucky (UK) - Kentucky Utilities lease (PR-8237). At issue was a 365-day cancellation clause (rather than the statutory 30-day cancellation clause) and the unusual in-kind services/promotional benefits contained in the lease. She said follow-up correspondence from UK was subsequently received by the committee indicating the university had modified the lease to reduce the term of the cancellation clause to 30 days. In that correspondence, the university also indicated it was proceeding with the lease. The remaining item of correspondence was an approval letter from Finance and Administration Cabinet Secretary Kevin Flanery regarding two projects given contingent approval by the committee at its August meeting: the Somerset Community College

Stoner Building HVAC Renovation project and the Statewide Transportation Operations Center project. Secretary Flanery indicated both projects were submitted to the Interim Appropriations and Revenue Committee as directed and while that committee did not approve the projects, no objections were made. He indicated he had given his approval for the projects to proceed. Ms. Collins said also included in members' folders was the Kentucky Lottery Corporation's monthly financial report for June 2002.

Ms. Collins briefly summarized one information item in members' folders - a news article from the September 9, 2002, issue of *The Bond Buyer*: "Emergency Spending Plan Comes Under Fire in Kentucky; Moody's Takes Note."

Chairman Haydon said the first item of old business was a report regarding projects initiated by the University of Kentucky Wildcat Foundation last May. The committee asked that representatives of various state agencies form a Working Group to do two things: conduct a specific review of the UK Baseball Stadium Renovation project and other projects undertaken by the Wildcat Foundation; and conduct a general review of the processes that apply to construction projects undertaken by a foundation or other non-governmental entity on state-owned property. He called on Ms. Robin Kinney, Deputy Finance Secretary, to present the report.

Ms. Kinney said she appreciated the opportunity to discuss the Working Group report, and thanked the other members of the Working Group for participating: Sherron Jackson, Council on Postsecondary Education; Bill Hintze and John Hicks, Governor's Office for Policy and Management; Dick Carroll, Office of the Attorney General; and Stephanie Robey and Bob McBeath, Office of the Auditor of Public Accounts. Ms. Kinney said in response to correspondence from the Working Group, Dr. Jack Blanton, Senior Vice President for Administration, UK, indicated that the only project the foundation initiated after July 1, 2002, was the baseball stadium project. She said the Working Group determined that the project should have been reported to the committee. She said the Working Group was also asked to develop guidelines for reporting projects with non-governmental or foundation participation. Ms. Kinney said the report states that universities choosing to manage their own capital construction projects (UK, University of Louisville, and Murray State University), are bound by the same statutory and regulatory requirements as the Finance and Administration Cabinet; therefore, the universities should follow the same capital project rules the Finance and Administration Cabinet follows.

Ms. Kinney said when it comes to non-governmental or foundation participation in a postsecondary education project, the definition of capital projects specifically states the source of the funding is not material. Generally speaking, such projects follow the same path regardless of the source of funding.

Ms. Kinney said the Working Group reviewed the capital construction statutes, and found the language in KRS Chapter 164A may be confusing in some instances. She explained that KRS Chapter 164A has remained unmodified for the last 20 years, while other capital construction statutes have been routinely modified. She noted the General Assembly enacted House Bill 1 in a Special Session in 1997 relating to postsecondary institutions that specifically charged the Council on Postsecondary Education with the review and approval of all capital construction projects regardless of the source of funding. Overall, the intent of KRS Chapter 164A is that the universities managing their own projects should still follow the same path as the Finance and Administration Cabinet. Ms. Kinney said the Working Group concluded that there should be prior disclosure to the committee, to the Finance Administration Cabinet, and to the Council on Postsecondary Education of projects to be constructed by private organizations on state property. Ms. Kinney said the definition of capital projects is clear, and if a project falls within the definition of a capital project, those projects should come before the committee.

Senator Buford asked if there are any penalties for not reporting a capital project to the committee. Mr. Bill Hintze, Deputy State Budget Director, Governor's Office for Policy and Management, said there were none.

Representative Wayne thanked Ms. Kinney and the other members of the Working Group. He asked why the Secretary of the Labor Cabinet did not participate in the Working Group since the committee had included the Secretary in its request for assistance. Ms. Kinney said they invited the Department of Labor to participate. However, the Department declined to participate at the time, but was very interested in the results of the report.

Representative Wayne asked if the Department of Labor responded when they found out the prevailing wage law was not followed on the UK baseball stadium project. Ms. Kinney said they did not respond to the Working Group.

Representative Wayne asked if there is any assurance from the University of Kentucky that workers not paid the prevailing wage for the baseball stadium renovation project will be compensated. Mr. Ken Clevidence, Associate Vice President, Auxiliary and Campus Services, UK, said the university did investigate and concluded the prevailing wage was not paid. He said he would ask Dr. Blanton and respond back to the committee.

Representative Wayne made a motion that the committee send a letter to the Secretary of Labor asking him to rule on whether or not the prevailing wage law applied in the UK baseball stadium renovation project, and if it did, that he carry out his statutory duties. The motion was seconded by Senator Jackson.

Senator Leeper asked if the motion directs the Secretary of Labor to review the contract and fine the contractor who did not pay the prevailing wage. Representative Wayne said he was requesting that a letter from Chairman Haydon be sent to the Secretary of the Labor Cabinet asking him to determine whether or not the prevailing wage law was followed on this project. He noted the Secretary has certain responsibilities to ensure that the workers on that project were justly compensated according to the prevailing wage law. Whether or not that responsibility falls to the contractor, the foundation, or to UK would be determined by of the Secretary of Labor.

Senator Jackson said the committee should study this issue closely and move forward because it seems like every month the committee is discussing this particular issue.

Senator Buford asked if Representative Wayne would amend his motion to say that the findings of the Secretary of Labor be returned to the committee with no action taken by his office. Representative Wayne said if the Secretary of Labor finds out the prevailing wage law was circumvented, he may want to issue a fine or make sure those workers are compensated justly. Senator Buford said it would be up to the workers to file a complaint, but the committee would want to know what the Labor Cabinet thought of the issue.

Representative Wayne said there were some workers that were not justly paid for their work. He said they represent men and women trying to make a living working full-time jobs and when they are paid unjust salaries, their representatives need to support them.

Representative Damron said these employees worked for a contractor on a private job, they expected what they were being paid, and the bid was done based on the fact they were not going to have to pay an artificially high wage. He said the university recognizes that what it did was improper, and will pay prevailing wage on any other projects in the future. He said for a government agency to fine a contractor and make him pay back wages on a project that was bid based on the rules of the game in place at that time raises the issue of fairness and is wrong.

Representative Wayne said he wanted to make sure the prevailing wage law is followed. He offered to accept Senator Buford's amended motion that the findings of the Secretary of Labor be transmitted to the committee with no other action requested of the Secretary. The motion to amend was seconded by Senator Jackson and passed by voice vote. A motion to approve the amended motion was then made by Representative Wayne and seconded. The motion passed by voice vote with Representatives Damron and Marcotte voting "No".

Representative Wayne asked if it is the Working Group's opinion that regardless of the source of the funds, any proposed capital construction on state property should be submitted to this committee for review if it has a value of \$400,000 or more. Ms. Kinney concurred.

Representative Wayne suggested that the committee's staff develop guidelines for the committee to use, based on the report presented. Chairman Haydon asked staff to work with Representative Damron and Senator Leeper in developing a draft policy.

The next item of new business was a report of a privately funded unbudgeted construction project for UK. Mr. Ken Clevidence said the American Cancer Society plans to build a facility, known as the Hope Lodge, on university property to house cancer patients undergoing outpatient treatment. The Society will lease approximately 1.76 acres on the university's south campus, and the facility will consist of an office wing, lodge rooms, and parking. Mr. Clevidence said the land lease will be for 30 years at \$1 per year, with two 15-year renewal options. Mr. Clevidence said the building will contain 10,000 square feet and cost approximately \$4 million. The Society will be responsible for all maintenance and operational funding.

Representative Wayne asked if the American Cancer Society has the money to complete this project. Mr. Clevidence said they are still raising funds for the project.

Representative Wayne asked if there are any assurances that the university will not be responsible for any of the cost of the project. Mr. Clevidence said construction will not start until the funds are in hand.

In response to another question from Representative Wayne, Mr. Clevidence said the American Cancer Society will be able to complete the project. He said they have built a number of these facilities around the country. Representative Wayne said this is a wonderful idea and a great team effort between the American Cancer Society and UK.

Senator Jackson made a motion to approve the unbudgeted construction project for UK. The motion was seconded by Representative Wayne and passed by voice vote.

Chairman Haydon next introduced Ms. Robbin Taylor, Director of Western Kentucky University (WKU) Governmental Relations, to answer questions regarding a food service management contract with Aramark. This project was on the committee's August agenda, but was tabled until the September meeting to allow for more study of the issue. Chairman Haydon said the committee is familiar with this project now and asked that Ms. Taylor entertain questions.

(WKU has nearly completed negotiations for a food service contract with Aramark Corporation. The negotiations include a \$3.5 million capital investment by Aramark for

construction as well as furnishings and equipment. The \$3.5 million in proposed improvements includes both construction and equipment/furniture replacement in three buildings: Garrett Conference Center, the Helm Library, and Downing University Center.)

In response to a question by Representative Marcotte, Ms. Deborah Wilkins, General Counsel, WKU, said Aramark will be required to issue a performance bond for all performance aspects of the contract.

Representative Wayne asked what the term "no cause" in the draft agreement meant. Ms. Wilkins said the statement "no cause" was not defined in the draft, but it means if Aramark terminates the contract with the university for no stated reason, the university will not be responsible for the unamortized balance of the improvements. Dr. Gene Tice, Vice President for Student Affairs, WKU, said the university has specified in the contract how Aramark can terminate the contract.

In response to another question from Representative Wayne, Ms. Taylor said workers will be paid the prevailing wage; it is specified in the contract.

Representative Damron made a motion to approve the WKU food service contract. The motion was seconded by Representative Marcotte and passed by voice vote.

Mr. Jack Morris, Director, Division of Real Properties, presented a lease modification report for the Labor Cabinet (PR-1069) in Franklin County. Mr. Morris said the Cabinet plans to install a doorway at its facility. The cost of the modification is \$1,883, and will be amortized over the life of the lease. Chairman Haydon said no action was required for lease modifications under \$50,000.

Chairman Haydon asked Mr. Bill Hintze and Armond Russ, Commissioner of the Department for Facilities Management, to present the monthly Finance and Administration Cabinet project report.

Mr. Hintze reported a project modification for the Morehead State University (MoSU) Satellite Tracking System. He said MoSU has decided to construct a new antenna rather than dismantle and relocate the older NASA antenna at Wallops Island in Virginia. The university will save money by purchasing a new antenna at a lower cost. He said they do not know the final cost of the new antenna, but the project is expected to cost less than the projected \$4.2 million. Mr. Hintze said the project is still primarily federally funded. Chairman Haydon said no action was required by the committee.

Mr. Hintze next discussed a land acquisition report for MoSU. He said the university is acquiring a 12-acre tract of land through a lease-purchase agreement. The land is being acquired through a lease-purchase agreement because the university does

not have the cash available to make the direct purchase. The total cost of the acquisition is \$1,297,840 and agency restricted funds will be used.

Lastly, Mr. Hintze reported a \$360,000 scope increase for an emergency roof replacement project at Bluegrass Station in Lexington for the Department of Military Affairs. The Department had previously reported a 100% restricted fund roof replacement project for \$860,000 in December 2001. Mr. Hintze said once the work started, they realized more serious structural repairs were needed. The revised project scope is \$1,220,000. Since the project is an emergency, no further action was required.

Chairman Haydon said the next agenda item was the bond activity report from the Office of Financial Management. He asked Ms. Sandy Williams, Kentucky Infrastructure Authority (KIA), to report new items proposed for KIA assistance. The first project presented was a Fund A loan in the amount of \$1,951,486 for the City of Salyersville to assist in the construction of a new wastewater treatment plant and additional sewer lines.

Senator Buford made a motion to approve the Fund A loan. The motion was seconded by Representative Wayne and passed by voice vote.

Ms. Williams presented one Fund C loan: \$1,510,000 for the McCreary County Water District, to help pay for expansion of its water treatment plant, installation of water lines, and construction of a water storage tank.

Senator Buford made a motion to approve the Fund C loan. The motion was seconded by Representative Wayne and passed by voice vote.

Ms. Williams next reported 14 new 2020 Account/Fund B Grants: City of Prestonsburg, Floyd County - Waterline extension; City of Evarts, Harlan County - Waterline extension; City of Hickman, Fulton County - Upgrade of tanks and pumps; City of Corbin, Knox County - three separate waterline extension projects; Consolidated Infrastructure Management Authority, Logan County - Waterline extension; Butler County Water System Inc. - Water system improvement; Simpson County Water District - Waterline extension; Warren County Water District - Upgrade current pump station; East Logan Water District - Install new storage tank; and City of Sacramento, McLean County - Replace wells and cisterns/ waterline extension to the area. The committee approved these projects in January, and no further action was required.

Chairman Haydon next called on Ms. Nora Marshall and Ms. Terri Fugate, Office of Financial Management, to discuss the agency's bond issue reports. Ms. Marshall presented a new bond issue: Kentucky Economic Development Finance Authority (KEDFA) College Refunding and Improvement Revenue Bonds, Series 2002 (Centre College Project), net proceeds not to exceed \$35,055,000. The proceeds will be used by Centre College to refund outstanding bonds, to prepay an outstanding loan to finance

various renovations and improvements to the campus, and to acquire equipment for the campus.

Senator Jackson asked if these bonds affect the bonding capacity of the state. Ms. Marshall said these bonds are not an obligation of the state or KEDFA, and they are payable solely from the revenues of Centre College.

Senator Buford made a motion to approve the KEDFA bond issue. The motion was seconded by Representative Wayne and passed by voice vote.

Ms. Marshall next presented another new bond issue: WKU Consolidated Educational Buildings Refunding Revenue Bonds, Series N, dated September 1, 2002, with gross proceeds of \$6,120,800. The proceeds will be used to refund outstanding bonds.

Senator Jackson made a motion to approve the WKU bond issue. The motion was seconded by Representative Marcotte and passed by voice vote.

Ms. Terri Fugate, Office of Financial Management, then reported another new bond issue: KIA Governmental Agencies Program Revenue Bonds, 2002 Series L, \$15,265,001. The proceeds will be used to provide permanent financing for projects funded by the governmental agencies program.

Senator Buford made a motion to approve the KIA bond issue. The motion was seconded by Representative Wayne and passed by voice vote.

Ms. Fugate reported another refunding issue: KIA Wastewater Revolving Fund Program Revenue Refunding Bonds, 2002 Series H; Infrastructure Revolving Program Revenue Refunding Bonds, 2002 Series N; Infrastructure Revolving Fund Program Revenue Refunding Bonds, 2002 Series O; Governmental Agencies Program Revenue Refunding Bonds, 2002 Series K; Solid Waste Revolving fund Program Revenue Refunding Bonds, 2002 Series F. Estimated gross proceeds for this issue, to be used to refund outstanding bonds, is \$43,261,199.

Representative Wayne made a motion to approve the new bond issue. The motion was seconded by Representative Marcotte and passed by voice vote.

Ms. Marshall reported twenty-two refunding bond issues with School Facilities Construction Commission (SFCC) debt service participation: Anderson County, Ballard County, Barren County, Boone County, Elliott County (2), Floyd County (2), Grayson County, Harlan County, Harrison County, Hopkins County, Knox County, Lyon County, Mason County, Morgan County, Owsley County, Robertson County, Rowan County,

Simpson County, Trimble County, and Walton-Verona Independent. Representative Damron abstained from the vote, citing a potential conflict of interest.

Representative Marcotte made a motion to approve the school bond issues. The motion was seconded by Representative Wayne and passed by voice vote.

Chairman Haydon said there were three locally funded school bond issues submitted to the committee for review this month: Jackson County, Meade County, and Woodford County. He said all disclosure information has been filed, and no further action on the bond issues is required.

Chairman Haydon said the committee's next meeting is scheduled for October 15 at Murray State University.

With there being no further business, Representative Damron made a motion to adjourn the meeting. The motion was seconded and passed by voice vote. The meeting adjourned at 2:05 p.m.